Service of the within and receipt of a copy thereof is hereby admitted this ..... day of July, A.D. 1976.

Supreme Court, U. S.
FILED
JUL 21 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1357

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

DONALD J. ZOLNAY and GUNTER E. VOELPEL,
Respondents.

Response to the Petition for Writ of Certiorari to the Supreme Court of the State of California.

CHAPMAN AND FOWLES,
By DON L. CHAPMAN,
130 Short Street,
Bishop, Calif. 93514,
(714) 873-3505,
Attorneys for Respondents.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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DONALD J. ZOLNAY and GUNTER E. VOELPEL,
Respondents.

Response to the Petition for Writ of Certiorari to the Supreme Court of the State of California.

Come Now the respondents Donald J. Zolnay and Gunter E. Voelpel and offer the following reasons why the Petition for Writ of Certiorari to the Supreme Court of the State of California should not be granted.

The Questions Posed in the Petition for Writ of Certiorari Are Moot.

A. Respondents contend that they have been denied their right to a speedy trial under the provisions of the Sixth Amendment to the United States Constitution, which provides as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which dis-

trict shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." .

The California Constitutional provision here in question provides, in Article I, Section 13, Clause 1:

"In any criminal prosecution, in any court whatever, the party accused shall have the right to a speedy and public trial; * * *"

The California State Legislature has enacted, by statute, the time limits within which a defendant must be brought to trial under the California Constitutional provision above cited. This legislation is encompassed in Section 1382.2 of the California Penal Code, see Appendix 1, also Section 1538.5(1) (Appendix 1 to the Petition).

Statement of Facts Applicable to the Above Discussion.

I.

Petitioner has included in its Petition a section on "LOWER COURT PROCEEDINGS" and a section on "STATE APPELLATE PROCEEDINGS", both of which are accurate and no issue is taken therewith; however, there were proceedings taken in the trial court following the time when the decision of the California Supreme Court became final, as provided in Rule 24(a) of the California Rules of Court, see Appendix 2, and the fact that the Petition for Rehearing was filed by petitioner does not extend the time within which the decision becomes final under Rule 27 of the California Rules of Court, see Appendix 3.

In the present case, the decision of the California Supreme Court was filed on the 15th day of December, 1975 (p. 1, Petition for Writ of Certiorari), and on January 14, 1976, the Petition for Rehearing filed by the Attorney General's office was denied (Appendix D of the Petition for Writ of Certiorari), and on that same day, the decision of the California Supreme Court became final under the provisions of the California Rules of Court cited above.

Proceedings in the Trial Court After the California Supreme Court Decision Became Final.

1. On January 21, 1976, counsel for respondents appeared in the trial court and made a demand for a speedy trial, and withdrew all prior waivers, and the case was set for trial on March 15, 1976, at 10:00 a.m., see Appendix 4.

2. On March 15, 1976, trial was continued to March 16, 1976, at 10:00 a.m., see Appendix 5.

3. On March 16, 1976, the District Attorney of Mono County appeared in court at the time set for trial and moved for a continuance, which motion was granted over the objection of respondents, and the trial was continued to March 22, 1976, at 10:00 a.m., see Appendix 6.

4. On March 22, 1976, the trial court was informed that the Attorney General of the State of California had applied to this Court for a stay of proceedings, and the trial was held up on that date until the trial court was informed that Associate Justice Rehnquist had refused to issue a stay order, at which time the District Attorney moved to dismiss the action against both respondents, and the trial court made its order

of dismissal of these actions under the provisions of Section 1385 of the California Penal Code, see Appendix 7. Subsequently a copy of the decision of Associate Justice Rehnquist was received and a copy thereof is attached hereto as Appendix 8.

It is the position of the respondents that the questions raised in the Petition are moot, because the procedures followed after the decision of the California Supreme Court became final, effectively denied the respondents their right to a speedy trial under the United States Constitution (cited above), the California State Constitution (cited above), and the California Statutes (cited above).

The Questions Posed in the Petition for Writ of Certiorari Are Moot Because California Statutes Preclude the Refiling of the Same Actions Against the Respondents in This Factual Situation.

The original Information in this case was filed on May 9, 1973 (see p. 3 of Petition) (Appendix E attached to Petition), and thereafter the Information was dismissed on July 18, 1973, and then on August 31, 1973 indictments were returned against the defendants (Appendix G of the Petition for Writ of Certiorari) and on March 22, 1976, the case was dismissed on a finding of insufficiency of the evidence.

Under the provisions of Section 1387 of the California Penal Code, as amended in 1975, see Appendix 9, this action is barred unless:

> "The court finds that substantial new evidence has been discovered by the prosecution which would not have been known through the exercise of due diligence at or prior to the time of dismissal."

Almost three years had elapsed from the time of the filing of the original Information in this case, and it stretches the imagination to believe that any new evidence could now be discovered which could not "with the exercise of due diligence" have been discovered prior to the date of dismissal on March 22, 1976.

Issues Raised in the Petition for Writ of Certiorari.

I.

It is respondents' contention that the issue in this case is not whether any question may be asked of suspects after they have inquired about their right to counsel under *Miranda,* but whether under the factual situation presented in this case there was a *Miranda* violation, taking into consideration not only the events that occurred at the time of the inquiry, but also those that preceded and followed it.

Without going into all of the intricate reasoning of this court in the case of *Miranda v. Arizona,* 348 U.S. 436, it seems clear that this court recognized that the mere fact of in-custody interrogation creates an atmosphere of coercion which could render a confession involuntary, and requires the procedures set forth in *Miranda* be "scrupulously followed". In the case of *Michigan v. Mosley,* 96 S.Ct. 326, this court noted that in both the first interrogation and the second

interrogation, the procedures set out in *Miranda* were "scrupulously followed" and on this basis reversed the holding of the lower court.

The factual situation in the present case is as follows:[1]

a. After questioning the defendants separately, they were then brought back together and the statement was made by one of the officers that they were considered prime suspects, or words to that effect [II RT, p. 7, lines 1-22] [PHT, p. 48, line 14, to p. 49, line 26] [GJT, p. 42, lines 8-21; p. 63, lines 22-26] [II RT, p. 19, lines 15-18].

b. Immediately after, the officers said to the defendant that they thought they (the defendants) were guilty, or words to that effect. Then Mr. Voelpel said, "Do you think we need an attorney?" [PHT, p. 49, lines 17-22] [GJT, p. 63, line 22, to p. 64, line 1] [II RT, p. 19, lines 15-18], or, "I guess we need a lawyer." [GJT, p. 42, line 26]. Then Officer Wilmot said, "Yes, I think you do," or words to that effect [PHT, p. 48, line 22, to p. 49, line 8] [GJT, p. 42, line 22, to p. 43, line 1; p. 63, line 28, to p. 64, line 3] [II RT, p. 9, lines 18-21; p. 19, lines 19-25]. Then Mr. Voelpel said, "We don't have an attorney, can you recommend one for us?" To which Officer Wilmot replied, in substance, "I can't recommend one for you, but there are several in the area and here is a telephone book", which he laid on the desk [GJT, p. 43, lines 3-13; p. 64, lines 2-15] [II RT, p. 20, lines 2-12].

---

[1]In the following Statement of Facts PHT refers to the Preliminary Hearing Transcript; GJT refers to the Grand Jury Transcript; and II RT refers to the Transcript of the hearing on the Motion to Suppress.

c. Then after the discussion set out above, and after the defendants had been furnished with the telephone book, but prior to the officers leaving the room to allow the defendants to discuss the matter among themselves, a further statement was made to them by the officers, although the officers' account of what was said varies, Officer Wilmot told the Grand Jury, at page 43, lines 14-21, of the Grand Jury Transcript:

> "Q. Did you then have further conversation with them about perhaps their need for a lawyer?
>
> A. No, I advised them that both Deputy Strong and myself advised them that we'd like them to talk it over among themselves, and we'd leave the room, and they could make a decision, we just wanted to get the thing cleared up."

However, Officer Strong gave the following account of the same statement at page 64, lines 17 through 20 of the Grand Jury Transcript:

> "A. After that, we told them, well, look, if you want to talk it over between you and decide what you want to do, you can. We said, you can make the investigation hard for us or easy for us, we feel that you are guilty and we are going to pursue it and why don't you talk it over." [See also II RT, p. 12, line 20, to p. 13, line 18].

d. Immediately following this last-discussed statement, the officers left the room, and when they returned, the officers initiated the conversation, asking if the defendants were ready to discuss it [GJT, p. 44, lines 4-9] [II RT, p. 31, lines 14-21; p. 27, line 23, to p. 28, line 2].

It was only after the statements and discussion set out in Paragraphs a. through d., above, that either of the defendants made any incriminating statement whatsoever [GJT, p. 44, lines 5-9; p. 63, lines 11-26; p. 64, line 25, to p. 65, line 1] [PHT, p. 48, lines 14-23], even though each had been interrogated for approximately fifteen minutes separately before the discussion about an attorney occurred [GJT, p. 41, line 11, to p. 42, line 7] [II RT p. 5, line 9, to p. 6, line 3].

Following the giving of confessions and as a direct result of further admissions by the defendants, the officers were led, by the defendants, to the location where the items taken in the burglary had been buried and said items are presently being held as evidence against the defendants [PHT, p. 69, line 11, to p. 70, line 3] [GJT, p. 65, line 22, to p. 66, line 15].

The California Supreme Court relied substantially on this statement of facts in arriving at its decision (see pages 28 and 29 of Appendix A to the Petition). As pointed out above, the purpose of *Miranda* is, if possible, to eliminate the coercive effect of in-custody interrogation, yet in this case, and after the respondents had requested information concerning an attorney, the officer made the statement:

> "After that, we told them, well, look, if you want to talk it over between you and decide what you want to do, you can. We said, you can make the investigation hard for us or easy for us, we feel that you are guilty and we are going to pursue it and why don't you talk it over." [GJT, p. 64, lines 17-20] [II RT, p. 12, line 20 to p. 13, line 18].

This last statement can only be considered as an effective attempt to bring more pressure to bear on the suspects, and it is respectfully submitted that the California Supreme Court so construed when it said:

> "The people argue that even if VOELPEL's question is deemed an implicit exercise of Fifth Amendment Rights, the subsequent confession should be viewed as independent and volunteered. This assertion too is unsupported by the facts. ZOLNAY's confession is not spontaneous. It was offered after the deputies had left the defendants for five to ten minutes with the message that the defendants could make the officers' jobs 'easy' or 'tough'. Furthermore, the deputies asked, upon returning to the room, whether the defendants had made any decision." (see Appendix A, page 35 of the Petition).

Finally, petitioner asserts on page 14 of the Petition:

> "However, the officers testified that they did not construe the statement of respondent VOELPEL as a request for an attorney. (II RT 25-26)."

The verbatim cited portion of the transcript is:

> "Q. Why did you pick, if you know, why did you pick that particular time to leave the room with them with the phone book and go out.
>
> A. Did that because of the concern that they had expressed about an attorney. However, they never said that they wanted an attorney at that time. We wanted to give them ample time to make a decision whether they wanted an attorney or wanted to make the *admissions*." (Emphasis added).

This was the testimony of Officer Charles W. Strong, at the hearing on the Motion to Suppress.

However, later on in that same hearing at II RT page 29, lines 16-28, Officer Strong testified as follows:

> "Q. Counsel asked on cross-examination that when—I believe it was when defendant VOELPEL asked, 'Do you think we need an attorney,' if that did not mean something to you, and you said, 'Yes, it did,' but you never told us what it meant. Do you recall, what, in your opinion, this did mean to you when defendant VOELPEL said, 'Do you think we need an attorney'?
>
> A When he stated that, 'Do you think we need an attorney,' to me that was a partial concern for his guilt, and that he was preparing to go ahead and make admission and/or in other words, he was going to go ahead and confess the crime and that he would need an attorney after he made his confession to represent him when he got into court."

The California Supreme Court discussed the last-quoted answer of Officer Strong in its opinion as follows:

> "While Officer Strong asserted that he understood the question as demonstrating the concern about the need for counsel *in the future*, the record discloses the interest was more immediate. As previously noted, the discussion regarding an attorney interrupted the interrogation at a critical juncture and included a request that the deputies recommend a lawyer at the time the request was made." (Court emphasis) (Appendix A, page 34 of the Petition).

II.

The second issue posed by the petitioner in its Petition is "whether a suspect may invoke the right to counsel under *Miranda* for another suspect *against the second suspect's wishes?*" (Emphasis added).

It is contended by respondents that petitioner makes the unwarranted assumption in this statement of the issue that respondent Zolnay did not wish to assert his rights to counsel, and, in fact, wanted to confess to his involvement in the crime; however, referring the court to page 7 of the Petition, the following is stated;

> "Neither suspect made any admission of guilt during this separate questioning, which lasted approximately fifteen minutes for each suspect (GJT 42; II RT 5)."

It is respectfully submitted that if Mr. Zolnay had wanted to waive his *Miranda* rights, including his right to counsel and his right to remain silent and make a confession, "to get the matter off his mind" then this period of approximately fifteen minutes of separate interrogation would have been the time to do so, but he made no such confession.

At page 22 of the Petition, the petitioner states:

> "The record indicates that the officers did not understand respondent VOELPEL to be invoking any privilege accorded under *Miranda* on behalf of respondent ZOLNAY (II RT 22)."

However, when testifying before the Grand Jury, Deputy Strong testified as follows:

"Q. What took place here?

A. At this time, Mr. VOELPEL asked Deputy Wilmot if he thought they needed an attorney.

Q. What was the response?

A. He said, yes, I do, I think you need an attorney.

Q. Then, what happened?

A. At this time, *they* expressed a concern that neither one of them had an attorney in their employment, and asked if we could advise *them* of an attorney to contact or whatnot, you know, we told *them* we couldn't recommend a specific attorney, however, there were several working in the area and we mentioned—Deputy Wilmot mentioned Celaya he mentioned two or three attorneys, I wouldn't repeat the names, because I'm not sure which attorneys he mentioned, but he picked up the telephone book and said, here they are, all listed and held out the telephone book as to hand it to *them*." (Emphasis added). [GJT, p. 63, line 27, to p. 64, line 13].

The California Supreme Court, on this point said the following at pages 34 and 35 of Appendix A attached to the Petition:

"We find no significance in the fact that *both* defendants rely upon VOELPEL's statements to the officers as constituting an invocation of their Fifth Amendment Rights under *Miranda*. It is apparent that they were interrogated jointly, and that the officers questions regarding their desire to speak with or to consult an attorney were addressed to both."

Conclusion.

It is respectfully submitted that the questions posed in the Petition for Writ of Certiorari are moot for the reasons set out above.

It is further respectfully submitted that this case does not fall within the purview of Rule 19(a) of the Rules on Appeal to the United States Supreme Court, in that the California Supreme Court has not decided this case, "in a way probably not in accord with applicable decisions of this court."

It is respectfully submitted that the Petition for Writ of Certiorari to the Supreme Court of the State of California should be denied.

Respectfully submitted,

CHAPMAN AND FOWLES,
By DON L. CHAPMAN,
Attorneys for Respondents.

APPENDIX 1.

California Penal Code.

§ 1382.

2. When a defendant is not brought to trial in a superior court within 60 days after the finding of the indictment or filing of the information or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after such mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which in effect grants a new trial, *within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney,* or within 90 days after notice of the writ or order where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing in a municipal or justice court; except that an action shall not be dismissed under this subdivision if it is set for trial on a date beyond the 60-day period at the request of the defendant or with his consent, express or implied, or because of his neglect or failure to appear and if the defendant is brought to trial on the date so set for trial or within 10 days thereafter. (Emphasis added.)

APPENDIX 2.

California Rules of Court.

RULE 24. DECISION OF REVIEWING COURT

(a) [When decisions become final] All decisions of the reviewing courts shall be filed with the clerk, who shall forthwith transmit a copy of the opinion to the lower court or tribunal and to the parties. A decision of the Supreme Court becomes final 30 days after filing unless the court orders a shorter time or, prior to the expiration of the 30 day period or any extension thereof, orders one or more additional periods of time not to exceed a total of 60 additional days. A decision of a Court of Appeal becomes final as to that court 30 days after filing, except that the decision becomes final as to that court immediately after filing upon the denial of a petition for a writ within its original jurisdiction or a writ of supersedeas, without issuance of an alternative writ or order to show cause, or the denial of an application for bail or to reduce bail pending appeal, or the denial of a transfer to a Court of Appeal after certification in a case within the original jurisdiction of a municipal or justice court. When a decision of a Court of Appeal is final as to said court, it is not thereafter subject to modification or rehearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein begins to run anew, as of the date of modification.

As amended, effective Jan. 1, 1957; Jan. 1, 1959; Jan. 1, 1961; Jan. 2, 1962; July 1, 1963; Nov. 11, 1966; Jan. 1, 1968; July 1, 1972; July 1, 1973.

APPENDIX 3.

California Rules of Court.

RULE 27. REHEARING IN COURT RENDERING DECISION

(a) [Power to grant rehearing] The Supreme Court or a Court of Appeal may grant a rehearing after its own decision in any cause except the denial by a Court of Appeal of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause or the denial of a transfer to a Court of Appeal after certification in a case within the original jurisdiction of a municipal or justice court. A rehearing may be granted on petition, as provided in subdivision (b) of this rule, or on the court's own motion, prior to but not after the time the decision becomes final therein. As amended, effective Jan. 1, 1957; Jan. 1, 1959; Jan. 2, 1962; Nov. 11, 1966.

(b) [Time for filing petition] A party seeking a rehearing either in the Court of Appeal or in the Supreme Court must serve and file a petition therefor within 15 days after the filing of the decision. As amended, effective Jan. 1, 1957; Jan. 2, 1962; Nov. 11, 1966.

(c) [Time for filing answer] An answer may be served and filed within 23 days after the filing of the decision. As amended, effective Jan. 1, 1957.

(d) [Form of petition and answer] Insofar as practicable, the petition and answer shall conform to the provisions of rule 15.

(e) [Determination of petition] An order of the Supreme Court granting a rehearing shall be signed by at least four judges assenting thereon, and filed with the clerk. If no order is made before the decision becomes final as provided in subdivision (a) of rule 24, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect. As amended, effective Jan. 1, 1961; Nov. 11, 1966.

APPENDIX 4.

Case Set for Trial.

The Superior Court of the State of California, in and for the County of Mono.

Court convened at 2:10 P.M. January 21, 1976, present Hon. Harry R. Roberts, Judge; Helen B. Pace, Deputy Clerk; Lloyd Wilson, Deputy Sheriff; ....., Reporter; and the following proceedings were had:

The People of the State of California, Plaintiff, vs. Donald J. Zolnay and Guenter Voelpel, Defendants. Nos. 4911 and 4912.
Motion for Trial Setting.

Appearances:

David M. Kennedy, Assistant District Attorney, for the People; Don L. Chapman, Attorney at Law, for the Defendants.

People move to consolidated the two cases.

It is stipulated between the People and defendants, that Cases Nos. 4911 and 4912, may be consolidated for trial and further proceedings, and the Court so ordered.

By the Court:

"Motion for trial setting granted."

Defendants demand a speedy trial within sixty (60) days, and withdraw any prior waivers.

By the Court:

"Matter is set for a three (3) day trial March 15, 1975, 10:00 a.m."

Adjourned, 2:25 p.m.

The foregoing instrument is a full, true and correct copy of the original on file in this office. Attest July 8, 1976. ANN M. WEBB, County Clerk and Clerk of the Superior Court, of the State of California, in and for the County of Mono. By /s/ Ann M. Webb.

APPENDIX 5.

Trial Continued to March 16, 1976.

In the Superior Court of the State of California in and for the County of Mono.

Court convened at 10:00 A.M. March 15, 1976, present Hon. ....., Judge; Helen B. Pace, Deputy Clerk; ....., Deputy Sheriff; ....., Reporter; and the following proceedings were had:

The People of the State of California, Plaintiff, vs. Donald J. Zolnay and Guenter Voelpel, Defendant. Nos. 4911 and 4912.

Court Trial.

No appearances.

By the Clerk:

There being no appearance by counsel, and the presiding Judge having been called out of the County, the above entitled matter is hereby continued to Tuesday, March 16, 1976, 10:00 a.m.

The foregoing instrument is a full, true and correct copy of the original on file in this office. Attest July 8, 1976. ANN M. WEBB, County Clerk and Clerk of the Superior Court, of the State of California, in and for the County of Mono. /s/ Ann M. Webb.

APPENDIX 6.

Trial Continued to March 22, 1976.

In the Superior Court of the State of California in and for the County of Mono.

Court convened at 1:45 P.M. March 16, 1976, present Hon. Harry R. Roberts, Judge; Helen B. Pace, Deputy Clerk; Lloyd Wilson, Deputy Sheriff; Fred Getty, Reporter; and the following proceedings were had:

The People of the State of California, Plaintiff, vs. Donald J. Zolnay and Guenter Voelpel, Defendants. Nos. 4911 and 4912.

Court Trial.

Appearances:

N. Edward Denton, District Attorney, for the People; Donald J. Zolnay and Guenter Voelpel, Defendants; and Don Chapman, Attorney at Law, for the Defendants.

There is a motion by the People for a continuance supported by a declaration and letters supporting same.

Defense counsel submits declaration to the Court and reviews with the Court what has happened so far in this case. Defense counsel then respectively asks the Court to proceed today with the trial or that the case be dismissed.

By the Court:

"Hereby continue this trial to March 22, 1976, 10:00 a.m., and in the event that this Court is not notified or served of Order by the U.S. Supreme

Justice, this Court will proceed with the trial of the defendants. Find that the Attorney General has not been diligent in this matter."
Adjourned, 2:15 p.m.

The foregoing instrument is a full, true and correct copy of the original on file in this office. Attest July 8, 1976. ANN M. WEBB, County Clerk and Clerk of the Superior Court, of the State of California, in and for the County of Mono. By /s/ Ann M. Webb.

APPENDIX 7.

Trial Court's Order of Dismissal.

In the Superior Court of the State of California in and for the County of Mono.

Court convened at 10:20 A.M. March 22, 1976, present Honorable Harry R. Roberts, Judge; Helen B. Pace, Deputy Clerk; Lloyd Wilson, Deputy Sheriff; Fred Getty, Reporter; and the following proceedings were had:

The People of the State of California, Plaintiff, vs. Donald J. Zolnay and Gunter E. Voelpel, Defendants. Nos. 4911 and 4912.

Court Trial.

Appearances:

N. Edward Denton, District Attorney, for the People; Don Chapman, Attorney at Law, for the Defendants; Donald J. Zolnay and Gunter E. Voelpel, Defendants.

Filed with the Court this morning is an Application for Stay of Superior Court Order Pending Review on Certiorari.

This Court has awaited a telephone call from the Supreme Court since 9:00 a.m. this morning, and to this hour, no calls have been received.

The District Attorney stated that approximately 15 minutes ago, he had been advised by telephone that the Associate Justice Wiliam H. Rehnquist has refused to render a Stay Order.

The District Attorney moves for dismissal of Indictment now on file.

No objections by defense counsel.

By the Court:

"Pursuant to the powers invested in this Court and Section 1385 of the Penal Code, Laws of the State of California, on the application of the prosecuting attorney and upon the furtherance of justice, the Court hereby orders the Information filed, dismissed, for the following reasons:

1. Insufficiency of evidence to further prosecution against defendants, and in accordance with this Court's ruling as affirmed by the California Supreme Court.

Bail is hereby exonerated and henceforth stand free and clear of impending charges."

The foregoing instrument is a full, true and correct copy of the original on file in this office. Attest July 8, 1976. ANN M. WEBB, County Clerk and Clerk of the Superior Court, of the State of California, in and for the County of Mono. By /s/ Ann M. Webb.

APPENDIX 8.

Decision of Associate Justice Rehnquist.

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

March 23, 1976

Honorable Evelle J. Younger
Attorney General of California
555 Capitol Mall, Suite 550
Sacramento, California 95814

ATTN: Willard F. Jones, Esq.
Deputy Attorney General

RE: California v. Donald J. Zolnay and Gunther E. Volpel, No. A-817

My dear Mr. Younger:

Your application for stay in the above-entitled case has been presented to Mr. Justice Rehnquist, who has endorsed thereon the following:

"3/19/76. Denied
No opinion of Sup. Ct.
Calif. filed with application.
W. H. R."

Very truly yours,
MICHAEL RODAK, JR., Clerk
By
Peter K. Beck
Assistant Clerk

dam
cc: Don L. Chapman, Esq.
130 Short Street
Bishop, California 93514

APPENDIX 9.

California Penal Code.

§ 1387. Dismissal as bar if felony previously dismissed or if misdemeanor; exception in felony cases if new evidence discovered

An order for the dismissal of an action pursuant to this chapter is a bar to any other prosecution for the same offense if it is a felony and the action has been previously dismissed pursuant to this chapter, or if it is a misdemeanor; except in those felony cases where subsequent to the dismissal of the felony the court finds that substantial new evidence has been discovered by the prosecution which would not have been known through the exercise of due diligence at or prior to the time of dismissal.

(Amended by Stats. 1975, c. 1069, p. ....., §1.)